

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 560 of 2019**

(Arising out of orders dated 08.07.2019 and 25.09.2019 passed in Writ Petition (S) No.4956 of 2019 and Review Petition No.184 of 2019 by the learned Single Judge)

S. P. Dubey S/o Shri K.N. Dubey Aged About 42 Years Presently Working As RPF Head Constable, Office Of Security Control RPF Nagpur, Division Nagpur, District Nagpur Maharashtra.

---- Appellant**Versus**

1. Union of India Through The Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Deputy Director SEC(E) Railway Board, New Delhi.
3. Director General Railway Protection Force, Bilaspur Division, Bilaspur Chhattisgarh.
4. Principal Chief Secretary Commissioner RPF South East Central Railway, Bilaspur Chhattisgarh.
5. Assistant Secretary Commissioner RPF Head Quarter, South East Central Railway, Bilaspur Chhattisgarh.

---- Respondents

For Appellant	: Shri C. Jayant K. Rao, Advocate.
For Respondent/Railways	: Shri Raj Kumar Gupta, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**P.R. Ramachandra Menon, Chief Justice****07.01.2020**

1. Interference declined by the learned Single Judge in respect of Annexure P/1 order, effecting an inter-zonal transfer between two different Railway establishments is sought to be challenged in this appeal.

2. Heard Shri C. Jayant K. Rao, the learned counsel appearing for the Appellant as well as Shri Raj Kumar Gupta, the learned Panel Lawyer appearing for the Railways.
3. The sequence of events reveals that the Appellant had joined the service as a 'Constable' in the Railway Protection Force ('RPF') and was subsequently promoted as 'Head Constable'. While serving in the South East Central Railway at BMY Charoda, Bhilai, an instance of theft of coal occurred in the Petitioner's area on 23.10.2018, pursuant to which, he came to be suspended on 11.01.2019 as per Annexure P/2. It was the case of the Appellant/Petitioner that he was not connected with the theft and was not on duty on the relevant date. But in the domestic enquiry conducted by the Employer-Railways, the Appellant was found guilty and as per Annexure P/3 order dated 14.06.2019, punishment was imposed upon him, whereby two increments were cut with cumulative effect. As per another order passed on the same date, the suspension ordered as per Annexure P/2 was revoked and by virtue of yet another order passed on that day itself, the Appellant was 'transferred' to Nagpur Division, where he joined duty as borne by Annexure P/4. The grievance of the Appellant is with regard to the subsequent course and events, by virtue of which, his service came to be transferred from the South East Central Railway to the Southern Railway as per Annexure P/1 dated 27.06.2019, which was just within a couple of weeks after passing the earlier transfer order on 14.06.2019 as per Annexure P/4. This made the Appellant to feel aggrieved, who sought to challenge the same by filing writ petition before this Court, mainly raising a contention that the order under challenge

having been passed by the 3rd Respondent- Director General Railway Protection Force, it was without authority and beyond jurisdiction. The Principal Chief Security Commissioner RPF, was stated as the competent authority, whereas the Director General of RPF was only the approving authority and hence it was beyond competence. Reliance was sought to be placed on the Railway Protection Force Rules, 1987 ('RPF Rules', for short), particularly Rule 91, which deals with inter-zonal transfers.

4. A case was also put up to the effect that the Petitioner was entitled to have the benefit of the Directive No.32, a copy of which has been produced as Annexure P/6 dated 28.12.2017. By virtue of the nature of the post held by the Petitioner, it was contended that he was to have a tenure posting of 5 years and since he had not completed 5 years after posting in Nagpur Division as per Annexure P/4, it was liable to be interdicted. The Appellant/Petitioner further contended that he was entitled to have the benefit of retention at Nagpur because of the studies pursued by the ward of the Appellant who was in the 10th standard as revealed from Annexure P/7.
5. The prayers were opposed from the part of the Railways and after hearing both the sides, it was held by the learned Single Judge that no strong case had been made out by the Writ Petitioner calling for interference with the impugned order and accordingly, the writ petition was dismissed. The operative portion of the said verdict; as contained in paragraph-6, reads as follows :

“6. Having heard the contentions put forth on either side and on perusal of record particularly the records

enclosed along with the writ petition and the documents, which the learned counsel for the respondents has produced during the course of the day, this Court is of the opinion that the impugned order does not suffer from any malice against the petitioner on the part of the respondents. That it has also been revealed that the petitioner has been posted under the SEC Railway for almost 20 years now. This Court is thus of the opinion that no strong case has been made out by the petitioner calling for an interference with the impugned order. Our reluctant to interfere with the impugned order would not preclude the petitioner from approaching the authority by an appropriate representation ventilating his grievances keeping in view the transfer policy of the Department. Subject to the petitioner's making an appropriate application, the respondents are expected to decide the same at the earliest."

6. Shri C. Jayant K. Rao, the learned counsel appearing for the Appellant points out that the merit of the case, particularly the legal contentions have not been properly adverted to by the learned Single Judge. It is also pointed out that it was sought to be projected by filing a review petition (Review Petition No.184 of 2019), but the learned Single Judge held that there was 'no error apparent on the face of the record' to invoke the power of review and accordingly, the review petition was dismissed, in turn leading to this appeal. The learned counsel also points out that, under exactly similar circumstance, the Calcutta High Court has referred to the relevant provisions of law and has held that, in a case of 'pre-mature transfer', the order had to be passed by the 'competent authority' and not by the 'approving authority'. It was also a case where the transfer order

was passed by the Director General of RPF, instead of passing order by the Principal Chief Security Commissioner RPF. The legal position declared by the Division Bench as per **Shyam Behari Pandey and Ors. v. Director General, Railway Protection Force and Ors.** reported in **2007 (2) CLJ (CAL) 694**, was adverted to and it was accordingly held that the impugned order was liable to be set aside; whereby the petition filed by the Employee was allowed. Same reasoning is applicable in the instant case and hence, the verdict passed by the learned Single Judge is required to be interdicted, submits the learned counsel.

7. Shri Raj Kumar Gupta, learned Panel Lawyer appearing for the Railways submits that there is absolutely no pith or substance in the submission as put-forth by the learned counsel for the Appellant. Reliance is sought to be placed on Rule 91 and in particular, Rule 91.2 of the RPF Rules. Different Rules are prescribed with regard to transfer, so as to meet the requirement and organisational interest. The learned counsel also makes a reference to the specific powers of the Director General of RPF, in particular with regard to transfer, as given under Rules 25 and 27 of the RPF Rules. It will be worthwhile to have a look at the relevant provisions as reproduced below :

“91. Inter-zonal Transfer:

91.1 Superior officers of the Force:

The Director-General on the recommendation of the [Principal Chief Security Commissioner] concerned or otherwise may transfer any superior officer from one zonal railway to another zonal railway or from Railway

Protection Special Force to a zonal railway or vice versa in the interest of administration of the Force.

91.2 Enrolled members of the Force:

All inter-zonal railway transfers of the enrolled members of the Force shall be ordered by the [Principal Chief Security Commissioner] concerned after obtaining the concurrence of the Director-General.”

8. There is no dispute that the Appellant herein is an 'enrolled member of the Force' and it being so, by virtue of Rule 91.2, transfer of enrolled member of the Force may be ordered by the Principal Chief Security Commissioner-RPF concerned, after obtaining the concurrence of the Director General-RPF. Coming to Rule 25 of the RPF Rules, it reads as follows :

“25. General powers and responsibilities of superior officers:

The superior officers of the Force shall exercise such administrative and disciplinary powers over the members of the Force placed under their command as are specified in Schedules II to IV and such other powers as are conferred on railway servants of equivalent rank by any rules relating to such servants and discharge such responsibilities as are specified in these rules or may be specified in any directions issued by the Central Government or the Director-General in this behalf. ”

9. Even a casual reading of the said Rule clearly denotes that the superior officers of the Force shall exercise such administrative and disciplinary powers over the members of the Force placed under their command, as are specified in Schedules II to IV and such other powers mentioned

therein. Coming to Schedule II, 'Sl.No.5' deals with transfer in respect of various instances as mentioned under sub-clauses (1) to (4). The nature of powers and the different authorities are also given in the form of a table. Relevant portion is extracted below, for convenience of reference :

SCHEDULE II
ADMINISTRATIVE POWERS OF SUPERIOR OFFICERS
(See Rule 25)

S. No.	Nature of powers	Director-General	[Principal Chief Security Commissioner]	[Chief Security Commissioner] Dy. Chief Security Commissioner / Principal RPF Academy	Divisional Security Commissioner / Security Commissioner / Commanding Officer Senior Security Commissioner	[**]/ Assistant Security Commissioner / Assistant Commandant of RPSF / Adjutant
1	2	3	4	5	6	7
1.	**	**	**	**	**	**
2.	**	**	**	**	**	**
3.	**	**	**	**	**	**
4.	**	**	**	**	**	**
5.	Transfer					
5(1)	From one cadre to the other in the Rly. Protection Force (See rule 16.4)	All enrolled members of the Force	No powers	No powers	No powers	-do-
5(2)	From the station to another in the same Division or unit.	-do-	All enrolled members of the Force	All enrolled members of the Force below the rank of Inspectors	All enrolled members of the Force below the rank of Inspectors	-do-
5(3)	From one division to the other division of the same railway or from one RPSF Bn to the other	-do-	-do-	-do-	No powers	-do-
5(4)	From one Railway to another railway or from Railway Protection Special Force to Zonal railway and vice versa	All enrolled members of the Force	All enrolled members of the Force after obtaining the concurrence of the Director-General in conformity with the rules on the subject.	No powers	No powers	No powers

10. Under Sl.No.5, sub-clause (4) is in respect of transfer from one Railway to another Railway or from Railway Protection Special Force to Zonal Railway and vice versa. Column No.III deals with the power of Director General of RPF; which clearly mentions that he is having power to effect the transfer of all enrolled members of the Force. In Column No.4 dealing with the powers of Principal Chief Security Commissioner-RPF, it is mentioned that he can exercise such power in respect of all enrolled members of the Force after obtaining the concurrence of the Director General in conformity with the Rules on the subject.
11. From the above, it is clear point blank that the Director General of RPF, who is the 'approving authority' in the case of an order passed by the Principal Chief Security Commissioner-RPF is virtually having all the powers as exercised by the Principal Chief Security Commissioner-RPF to effect the transfer in respect of all enrolled members of the Force, which, when exercised by the Principal Chief Security Commissioner-RPF, has to be after obtaining concurrence of the Director General, in conformity with the Rules. In the instant case, admittedly Annexure P/1 has been passed none other than the Director General of RPF, who is having the powers in terms of the above Rules and Schedule II and as such, the contention of the Petitioner that the impugned order is beyond jurisdiction of the 3rd Respondent does not hold any water at all.
12. The position becomes more clear, on reference to Rule 27 of the RPF Rules, which deals with the administrative powers of the Director General of RPF. Rule 27(1) of the RPF Rules reads as follows :

“27. Administrative powers of the Director-General:

General:

27.1 The Director-General shall-

- (a) exercise all executive and administrative powers in relation to the Force and its deployments;
- (b) arrange recruitment of Assistant Commandants and Sub Inspectors against such posts in the Force which are reserved for being filled up by direct recruitment;
- (c) order posting, transfer including inter-zonal railway transfers and training of all superior officers and enrolled members of the force;**
- (d) select superior officers and enrolled members of the force for specialized or advanced courses;
- (e) compile on an all India basis, a seniority list of all Inspectors and superior officers and maintain it up-to-date at his headquarters;
- (f) act as the appellate authority against the orders of a [Principal Chief Security Commissioner];
- (g) correspond with the State Governments and other Ministries of the Government of India for securing deputation of officers for appointment as superior officers of the Force.”

Clause (c) of Rule 27.1 clearly confers power upon the Director General to order postings, transfers including the inter-zonal railway transfers and training of all superior officers and enrolled members of the Force. This being the position, the idea and understanding of the Appellant/Petitioner that the Director General of RPF is having no power at all to transfer is thoroughly wrong and misconceived and it stands repelled accordingly.

13. Coming to the applicability of the judgements passed by the Calcutta High Court, it is not discernible from the said judgements that the specific powers of the Director General under Rule 27 and also the general powers of the Superior Officers under Rule 25, to be understood in the light of the relevant Schedule i.e. Schedule II at Sl.No.5(4), were ever brought to the notice of learned Judges either of the parties concerned. Insofar as the Rules are explicitly clear, we do not require any second thought to hold that the Director General of RPF is very much competent and is having power to transfer all enrolled members of the Force by virtue of Rule 25, 27, 90 and Schedule II as mentioned above. We respectfully disagree with the view taken by the Calcutta High Court; in so far as it relates to the powers of the Director General-purpose to effect the transfer.
14. The learned counsel for the Appellant submits that the tenure of posting, insofar as the post held by the Petitioner i.e. Head Constable concerned is '5' years as given by Annxure P/6 dated 28.12.2017 (Directive No.32). Since the Petitioner was 'transferred' to Nagpur as per Annexure P/4 dated 14.06.2019 and he has joined there on 19.06.2019, the subsequent transfer dated 27.06.2019 vide Annexure P/1 is stated as pre-mature and hence contended that interference is necessary.
15. This Court raised a query as to whether the suspension ordered on 11.01.2019 as per Annexure P/2 was ever revoked and the Appellant was reinstated, earlier. Though it was answered in the positive, it is ultimately conceded with respect to the materials on record that the suspension was revoked only on 14.06.2019, i.e. the date on which the disciplinary

proceedings were finalized and punishment was imposed upon the Appellant as per Annexure P/3, whereby two increments were cut with cumulative effect. Since the punishment was only stoppage of increment, the Appellant had necessarily to be reinstated after revoking the suspension ordered on 11.01.2019 as per Annexure P/2, which made the Respondents to pass another order on the same date i.e. 14.06.2019 revoking the order of suspension. Quite naturally, the Petitioner had to be given a posting, which has been ordered as per Annexure P/4 dated 14.06.2019, (the same day), whereby he was required to report at Nagpur Division. It cannot be presumed that the Railways were duty bound to keep the post of Head Constable held by the delinquent employee, who was suspended on 11.01.2019, vacant till the disciplinary proceedings were finalised; because of the nature and duties to be performed. However, pursuant to finalization of the disciplinary proceedings on 14.06.2019, the Appellant/Writ Petitioner had to be accommodated at same place and hence, posting was given at Nagpur Division as per Annexure P/4. In view of said circumstances, the terminology used in Annexure P/4 that the Appellant was 'transferred' from BMY Charoda, Bhilai to Nagpur Division is not of any significance to the cause involved. It is virtually a 'posting order' and as it stands so, Annexure P/1 dated 27.06.2019 cannot be regarded as a pre-mature transfer, but a proper one, so as to meet the administrative exigency as clearly mentioned therein.

16. With regard to the service rendered by the Appellant, the learned counsel for the Railways points out with reference to the return filed and in

particular, paragraph-7, the details of posting given to him so far. We find it appropriate to extract the table for easy reference :

Rank & UIN	Name [S/shri]	Date of Appointment	Previous postings with place and date		
			Place	From	To
HC 9901542	S.P. Dubey	26/02/99	RPF Post Bhilai	09.04.99	27.06.04
			RPF Post Durg	28.06.04	03.05.09
			RPF Post Bhilai	04.05.09	31.03.14
			TE Coy/Raipur	01.04.14	15.05.17
			RPF Post BMY	16.05.17	23.10.18

17. From the above, it is clear that the Appellant was serving the RPF ever since after joining the service in the year 1999, till date either in 'Bhilai', 'Durg', 'Raipur' or such other nearby places. The Petitioner has not pointed out any instance of malafides on the part of the Railways. It is also relevant to note that no officer of the Railways has been impleaded in personal capacity, to substantiate the malafides, if at all any.
18. It is settled law that transfer is an incidence of service and it cannot be interdicted unless it is challenged on specific grounds as to the competence of the authority who has ordered the transfer or involvement of any malafides. Both grounds are absent in this appeal, having repelled the contentions raised in this regard.
19. The learned counsel for the Railways submits that the transfer of the Appellant was necessitated from one zone to the other zone because of the administrative exigencies. Admittedly, the disciplinary proceedings have been finalized and it is conceded that no criminal proceedings are pending against the Appellant.

20. Transfer cannot be imposed as a punishment, unless it is separately provided as a 'punishment' in the service Rules in connection with the misconduct. However, transfer is possible, in lieu of suspension, to see that the person concerned does not get a chance to influence the witnesses or tamper with the records. This situation is not remaining as on date, since the disciplinary proceedings are finalized and no criminal proceeding is pending against the Appellant/Petitioner and the misconduct was only with regard to the lapses in discharging his duties.
21. The Petitioner has a further case that his ward is studying in Class X and as such, by virtue of Annexure P/6, Directive No.32 dated 28.12.2017, the Petitioner might be permitted to be retained, so as to help the ward to pursue his studies.
22. There is no grievance for the Petitioner with regard to the posting given in Nagpur Division as per Annexure P/4 and admittedly, he has already joined duty at Nagpur on 19.06.2019. When the Appellant contends that he is entitled to have the benefit of retention at Nagpur because of the studies being pursued by his ward, who is in 10th standard as revealed from Annexure P/7, it is relevant to note that the ward is studying in Kendriya Vidyalaya, B.M.Y., Charoda, Bhilai, Chhattisgarh. This being the position, how the Petitioner is benefited of Annexure P/6 dated 28.12.2017, by retaining him at 'Nagpur' while his ward is studying in 'Bhilai' is not properly demonstrated before this Court. However, this Court does not intend to say anything further in this regard. If there is any genuine grievance, it will be open for the Appellant/Petitioner to raise it

before the 3rd Respondent- Director General of the RPF pointing out the hardship by filing a representation. It is pointed out by the learned counsel that the Appellant has already moved the 3rd Respondent. In the said circumstances, we find it appropriate to cause the representation to be finalized as early as possible, at any rate within a period of three months from the date of receipt of copy of this verdict.

23. With the above observation, interference is declined and writ appeal stands dismissed.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge